

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii

February 22, 2008

CDUP Exp. Date: December 31, 2020

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Amendments to Conservation District Use Permit (CDUP) OA-2670 to Construct a Marina Entrance Channel at Honouliuli, Ewa, Hawaii

**PERMITTEE/
LANDOWNER:** HASEKO (EWA), Inc.
HASEKO (Hawaii), Inc.

LOCATION: Honouliuli, Ewa, Oahu

TMK: Portion of Plat (1) 9-1-012

BACKGROUND:

The subject area exists on the south shore of Ewa, Oahu and is part of the Ocean Pointe Master Plan. On April 26, 2000, the Board of Land and Natural Resources (Board) approved the first amended Findings of Fact, Conclusions of Law Decision and Order conditionally granting HASEKO a Conservation District Use Permit to construct a marina entrance channel at Honouliuli, Ewa, Oahu (**Exhibit 1 & 2**).

On July 13, 2001 the Board approved a request by HASEKO to amend CDUP OA-2670¹ to recognize a reduction in the size of the marina from 120 acres to approximately 70 acres. This amendment to the permit did not change the size of the entrance channel that is located within the Conservation District (**Exhibit 3**).

On August 24, 2007, proposed amendments to CDUP OA-2670 were to be heard before the Board, however it was brought to the Board's attention that an archeological site was damaged and a breach of the CDUP's conditions may have occurred. The agenda item was deferred and Staff was instructed to investigate a possible breach of the Memorandum of Agreement pursuant to conditions #10 & #26 of CDUP OA-2670 in regards to the treatment of historic sites on the project site.

On October 26, 2007, the Board found HASEKO in violation of §183C-7, Hawaii Revised Statutes and §13-5-6 of the Hawaii Administrative Rules regarding non-compliance of

¹ Condition # 32 of CDUP OA-2670 states, "Implementation of the project shall be in general conformity with the representations made in the application on file with the Department and at the contested case hearing. Any substantial change in the size or nature of the marina as determined by the department shall require an amendment to the permit. Any change that the department determines to be incidental, shall be permitted upon review and approval of the Chairperson."

Conservation District Use Permit (CDUP) OA-2670 Conditions #10 and #26 (**Exhibit 4**). HASEKO has paid all fines, has designated an alternative access and has closed a road that goes through the designated buffer zone (**Exhibit 5**). Furthermore, condition #7 of this enforcement action states, "The Board requests that the Department devise a monitoring compliance plan and report back to the Board."

Pursuant to the Board's request, the State Historic Preservation Division (SHPD) reviewed the matter and has noted that the SHPD has not been monitoring HASEKO's progress since 2004. SHPD further noted that the HASEKO has been self-monitoring, has reported incidents to the proper authorities, and continues to work with their archaeological consultants along with the Hoakalei Cultural Foundation (HCF) to insure proper protection of the sites (**Exhibit 6**).

SHPD has devised a monitoring compliance plan that calls for SHPD to:

- Review the new preservation plans for the preserves in consultation with the Office of Hawaiian Affairs (OHA);
- With OHA, participate with the HCF on the interpretative material and educational programs;
- Foster a relationship with HCF as long-term stewards of the preserves;
- Insure that the preservation plans are implemented and carried out acceptably; and
- Periodically check on the status of the preserves.

As such, Staff believes that HASEKO is compliant with CDUP OA-2670.

AMENDMENT REQUESTS

The permittee, HASEKO, proposes further revisions to the configuration of the recently named Hoakalei Marina that is not within the Conservation District. The current proposal is to reduce the Marina from approximately 70 acres to approximately 53.76 acres. This reduction in the size of the marina basin is being proposed as part of the on-going process of complying with regulatory constraints and requirements of the project, as development plans are refined and to enhance public use areas to better reflect the public nature of the marina (**Exhibit 7**).

Under CDUP OA-2670, HASEKO is mandated to provide public facilities and amenities around the marina (**See Exhibit 2**, Condition 15. PUBLIC ACCESS/FACILITIES RELATED). In addition, HASEKO envisions the marina area to include cultural displays, educational signs and kiosks, and other features that could create outdoor spaces celebrating the history of Ewa, coastal & maritime matters, Hawaii's culture and the natural resources. Open-air amphitheater, a hula mound, areas for multigenerational and accessible uses where people can relax and enjoy the marina ambiance are currently being envisioned. To accommodate these uses and to provide an adequate buffer between the marina and the residential area, additional land is required. By reducing the marina basin, there may be an increase in open space dedicated for public use.

As 16.24-acres is a substantial area of reduction, Board approval is required pursuant to CDUP OA-2670 condition #32 which states in part, "...any substantial change in the size or nature of the marina as determined by the Department shall require an amendment to the permit...".

ADDITIONAL CONDITION MODIFICATION

Upon review of the conditions of CDUP OA-2670, Staff also recommends that condition #11 and condition #22 should be amended. Condition # 11 states:

The applicant shall provide documentation (i.e. book/page or document number) that this approval has been placed in recordable form as part of the deed instrument for TMK: 9-1-12:6, prior to submission for approval of construction plans;

Staff notes, the area of marina construction is no longer identified as TMK: 9-1-12:6. According to HASEKO, the original TMK has gone through several subdivisions and further subdivisions are planned. Although recordation of the CDUP has been delayed, HASEKO has stated that prior to submission of construction plans for the marina entrance channel; CDUP OA-2670 shall be recorded with the final TMK that contains the marina.

Condition # 22 states:

The applicant shall provide fully developed and Government approved plans for constructing a flood drainage system through the marina development in concert with the drainage plans for the upper development of Kapolei, Ewa Villages, other developments in the Kalo'i Gulch watershed;

The Permittee is current pursuing an alternative drainage plan. The original permitted proposal involved lowering the Honouliuli sewer outfall to allow a regional drainage channel to cross over the outfall and exit through the Hoakalei Marina. This proposal required an inverted siphon to accommodate navigability over the outfall. A study identified maintenance issues, potential odor problems and potential spills that would be associated with siphoning the outfall. In addition, the existing elevation of the outfall appears to be too high for runoff to flow from east to west to the marina.

A revised drainage plan was developed to conform to the City's directive against crossing, lowering, siphoning, intersecting with and/or touching the existing sewer outfall system. To avoid intersecting regional drainage facilities with the Honouliuli sewer outfall and lowering the outfall to convey storm waters east of the outfall to the ocean, HASEKO and the City agreed to abandon efforts to utilize the marina to receive storm water runoff.

DISCUSSION:

The proposed reduction of the marina from approximately 70 acres to approximately 53.76 acres shall not affect the size of the entrance channel and therefore shall not change the nature, character, and extent of activity within the Conservation District as represented to the Board during the application process or the contested case proceedings nor should it result in any other or greater impacts than anticipated in the original Environmental Impact Statement for the project. On April 23, 2007, the Department of Planning and Permitting approved the minor modification of the SMP to reflect the smaller 53.76-acre marina (**Exhibit 8**).

Regarding Staff recommended amendments, deed recordation is an important aspect to insure that conditions of permitted uses shall run with the land even though the land may be bought,

sold or exchanged. As HASEKO has stated, prior to submission of construction plans for the marina entrance channel; CDUP OA-2670 shall be recorded with the final TMK that contains the marina.

Furthermore, Staff recommends that condition # 22 be amended to reflect that a flood drainage system shall not be diverted into the marina as HASEKO and the City have agreed to abandon efforts to utilize the marina to receive storm water runoff. In addition, HASEKO is currently pursuing an alternative drainage plan in which regional storm water flows are to be directed through Oneula Beach Park into the ocean, and not into the Marina as was originally planned².

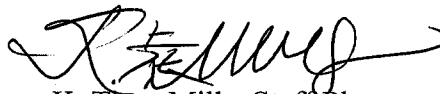
As such, Staff recommends as follows:

RECOMMENDATION:

That the Board of Land and Natural Resources approve the following amendments to CDUP OA-2670:

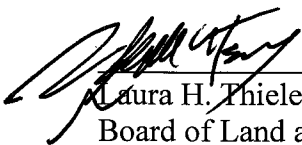
1. That the area of Hoakalei Marina shall be amended to reflect a reduction from approximately 70 acres to approximately 53.76 acres;
2. That Condition #11 be amended to state: The applicant shall provide documentation (i.e. book/page or document number) that this approval has been placed in recordable form as part of the deed instrument for the final TMK(s) that contains the marina component, prior to submission for approval of construction plans for the marina channel;
3. That Condition #22 be amended to state: The applicant shall provide fully developed and Government approved plans for constructing a flood drainage system in concert with the drainage plans for the upper development of Kapolei, Ewa Villages, and other developments in the Kaloi Gulch watershed;
4. That all other conditions imposed by the Board under CDUP OA-2670, as amended, shall remain in effect.

Respectfully submitted,



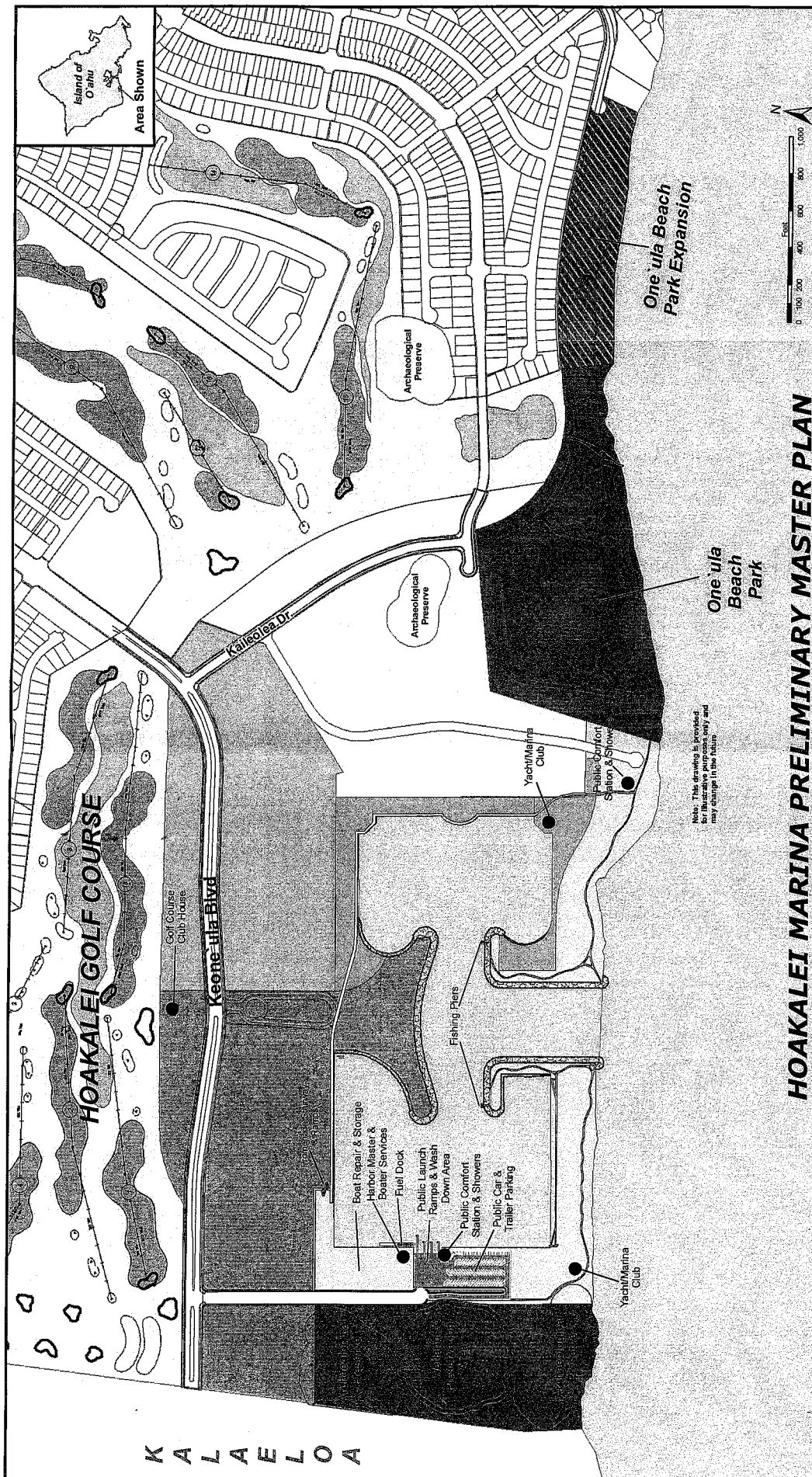
K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



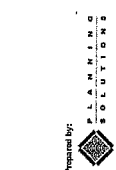
Laura H. Thielen, Chairperson
Board of Land and Natural Resources

² The Kaloi Gulch Drainageway Improvements Project is a pending Contested Case noted as OA 08-03.



HOAKALEI MARINA PRELIMINARY MASTER PLAN

- Promenade
- Revetment
- Commercial
- Resort
- Maritime Facilities & Parking
- Maritime Non-industrial
- Golf Course
- Marina Residential
- Other Residential
- Park/Preservation



H-HASEKO EWA, INC.

K A L A H E O

EXHIBIT 1

- I. With the conditions imposed by the Board of Land and Natural Resources in its Decision and Order herein, the entrance channel at Honouliuli Ewa, Oahu, is in compliance with the provisions of Chapters 183 and 205, Hawaii Revised Statutes, and Title 13, Chapter 2, Hawaii Administrative Rules.
- J. Any finding of fact herein contained in this decision and order which is determined to be more properly deemed a conclusion of law, is hereby incorporated in this part and made a conclusion of law herein.
- K. Because fishing is a traditional and customary practice of native Hawaiians and others along the shoreline adjoining Haseko's proposed Ewa Marina Project and in the waters where Haseko proposes to build the entrance channel to its proposed marina, Native Hawaiians, including Howell and her family, who engage in such activities are exercising rights "established by Hawaiian usage." § 1-1, H.R.S., see Pele Defense v. Paty, 73 Haw. 578 (1992), and protected under Haw. Const., Art XII, § 7. [SEBO proposed COL 7.]
- L. The BLNR has reviewed the evidence presented at the hearing pertaining to the issue of traditional and customary native Hawaiian rights exercised in the project area including the environmental effects the project will have on those rights. The Board finds that those rights have been sufficiently protected with the issuance of this conditional approval.



IV. DECISION AND ORDER

Based on the Findings of Fact and Conclusions of Law stated herein, IT IS THE DECISION of the Board of Land and Natural Resources to conditionally grant the applicant a Conservation District Use Permit for a marina entrance channel at Honouliuli, Ewa, Oahu, subject to the following conditions:

STANDARD CONDITIONS

1. The applicant shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments and applicable parts of Section 13-2-21, Hawaii Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers,

employees, contractors and agents under this permit or relating to or connected with the granting of this permit;

3. Since this approval is for use of conservation lands only, the applicant shall obtain appropriate authorizations through the Division of Land Management, State Department of Land and Natural Resources for the disposition of State land[s] in compliance with Chapter 171, HRS;
4. That in issuing this permit, the Department and Board have relied on the information and data which the applicant has provided in connection with the permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
5. That all representation relative to mitigation set forth in the accepted Environmental Impact Statement for this proposed use are hereby incorporated as conditions of this approval;
6. That failure to comply with any of these conditions shall render this Conservation District Land Use application null and void;
7. Other terms and conditions as prescribed by the Chairperson consistent with this Findings of Fact, Conclusions of Law, Decision and Order,
8. That the applicant understands and agrees that this permit does not convey any vested right(s) or exclusive privilege.
9. That the applicant notify the Department in writing when construction activity is initiated and when it is completed.

MODIFIED STANDARD CONDITIONS

10. The applicant shall comply with all applicable Department of Health Administrative Rules; including the Section 401 Water Quality Certification conditions; all applicable conditions of the U.S. Army Corps of Engineers Permit No. PODCO 2117 dated June 28, 1993, and applicable conditions of the Unilateral Agreement Declaration for Conditional Zoning;
11. The applicant shall provide documentation (i.e. book/page or document number) that this approval has been placed in recordable form as part of the deed instrument for TMK: 9-1-12: 6, prior to submission for approval

of construction plans;

12. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. The construction plans shall show the alternate public access routes to be used during construction. Plan approval by the Chairperson does not infer approval required of other agencies. Compliance with Condition 1 remains the responsibility of the applicant;
13. The evidence presented herein supports approval of Standard Condition 13-2-21(a), HAR, criteria met under 13-2-21(c)(1-4), HAR: Any work or construction to be done on the land shall be initiated within five years of the approval of such use, and all work and construction must be completed within ten years of the approval of such use;

14. **CONSTRUCTION RELATED**

- A. The applicant shall provide written advance-notice to the U.S. Coast Guard at least 30 days prior to any dredging or blasting;
- B. Prior to the submission for approval of construction plans, the applicant shall furnish the Department's Division of Aquatic Resources with a blasting plan for review and approval, if blasting is deemed necessary;
- C. Existing public access to and along the shoreline shall not be restricted during construction except as necessary to ensure safety. (p. 40 Cдуа, p. VI-3 FEIS) In the event that public access is restricted, the applicant shall provide alternate public access routes;
- D. The applicant shall leave a berm along the shoreline separating the marina entrance channel and the marina itself. The berm shall remain in place until the entire marina is completed before being removed;
- E. During construction, fishing along the seaward shoreline shall remain open as long as possible. The shoreline berm separating the marina from the ocean shall be wide enough to accommodate both construction operations and public access for fishing;

- F. Prior to connecting the marina waterways to the ocean, the applicant shall remove the collected silt and sediment within the marina;
- G. The applicant shall implement erosion control measures during construction, such as silt curtains;
- H. If applicable, the applicant shall construct the causeway or trestle within the channel boundaries;
- I. Disposal of excavated material shall be in compliance with the U.S. Corps of Engineers Department of the Army Permit;

15. **PUBLIC ACCESS/FACILITIES RELATED**

- A. Prior to breaching the shoreline to connect the marina with the ocean, the applicant shall construct piers that provide public fishing access along the banks of the marina. The piers shall be designed to accommodate the physically challenged;
- B. Should the applicant convey to the City and County of Honolulu (City) the approximate nine acres of beachfront land adjacent to Oneula Beach Park identified in the City's Ordinance 93-94 ("Unilateral Agreement and Declaration for Conditional Zoning") that prior to breaching the shoreline to connect the marina with the ocean, the applicant shall implement the "Oneula Improvements;"
- C. To protect the traditional and customary rights exercised in the project area, during construction of the marina, access to the shoreline fronting the project area must be permitted for the reasonable exercise of traditional and customary practices of native Hawaiians to the extent feasible and safe;
- D. After completion of the project, the applicant will provide, in addition to any other access for traditional and customary practices that may be established in any subsequent or future proceeding or by agreement, public access for the purpose of permitting the reasonable exercise of traditional and customary practices of native Hawaiians, to include the following;
 - 1. Dedication of approximately nine acres of beachfront land adjacent to Oneula Beach Park identified in the City's Ordinance 93-94 ("Unilateral Agreement and Declaration

for Conditional Zoning"), or alternatively, dedication to a perpendicular access to the shoreline which shall be no closer than 600 feet from the eastern boundary of Oneula Beach Park;

2. Dedication of the boat launching complex to the State of Hawaii as set forth in paragraph 15.F., below; and
3. Shoreline access on either side of the marina entrance channel as set forth in paragraph 15.G., below.

- E. The applicant shall make at least fifty percent of the boat slips available to the general public at reasonable market rates;
- F. The boat launching ramp complex shall be completed in a timely manner following breakout to the ocean. The applicant shall dedicate the launching ramp complex to the State of Hawaii. The launching ramp complex shall be operated and maintained by the State or others as a State launching facility. Subject to applicable laws, the State may at any time enter into a joint venture or operating contract with the Applicant for the operation and maintenance of the boat launching ramp complex as a State launching facility. In addition to the seven launching ramps, the launching ramp complex shall include: about 150 associated trailer parking, public parking, boat wash down areas, restrooms and outside showers. The launching ramp complex shall be open and available 24 hours a day;
- G. The applicant shall provide shoreline access with nearby restrooms, showers, and parking areas free-of-charge on each side of the channel;
- H. The applicant shall provide public access to and around the entire marina facilities through a series of internal vehicular, bicycle and pedestrian ways. The pedestrian pathway around the edge of the marina shall be open and available to the public free of charge at all times, excepting during the actual construction of the project and upon a determination by the Department or other governmental agency that if it is unsafe to permit public access to that area;
- I. The applicant shall provide well-signed and lit public pedestrian access around the edge of the marina; including a provision for diverting pedestrian access around certain facilities, such as boat

haul-out or repair facilities, where heavy equipment operation may pose a safety hazard;

- J. The marina waterway shall be open free of charge to navigational access by the general public in perpetuity;
- K. The applicant shall provide sewage pump-out facilities for boats using the marina;

16. MONITORING REPORT

- A. The applicant shall submit to the Department's Division of Aquatic Resources all monitoring reports for water quality turtle, marine resources inventory, etc.;
- B. The applicant shall conduct an additional marine biota survey three years following the breakthrough connecting the channel with the marina basin and submit the results to the Department. The survey shall be conducted along the same transects used to establish baseline data prior to construction;

OTHER/GENERAL

- 17. The applicant shall construct and maintain for a specified period of time as determined by the Department, an artificial reef subject to review and approval by the Department. Prior to the construction of an artificial reef, the applicant shall apply for, and obtain a Conservation District Use Permit;
- 18. The applicant shall be responsible for the maintenance dredging of the entrance channel to its approved depth and in accordance with the U.S. Corps of Engineers' Department of the Army Permit;
- 19. The applicant shall notify the U.S. Coast Guard of its intention for marking the entrance channel and marina with navigational aids;
- 20. The applicant shall obtain appropriate approval from the Commission on Water Resource Management relative to the caprock aquifer issues;
- 21. The applicant shall be responsible for removing any noxious aggregations of algae washed up along the shoreline fronting the applicant's property;
- 22. The applicant shall provide fully developed and Government approved plans for constructing a flood drainage system through the marina

development in concert with the drainage plans for the upper development of Kapolei, Ewa Villages, other developments in the Kaloi Gulch watershed;

23. The applicant shall submit a comprehensive Maintenance and Management Plan for the Marina and its operations to the Department for review and approval prior to opening the marina for vessel use. The plan should be designed to protect water quality of the marina and ocean waters, among other things, and shall include, but not be limited to the following:
- Elements identified on pages 11, 12, and 41 in the permit application;
 - Enforcement;
 - Responsibilities for compliance of the plan clearly defined;
 - Procedures for coordinating with the U.S. Customs, the U.S. and State Department of Agriculture, the Department of Health and other federal and state agencies having an interest in processing foreign arrivals;
24. Prior to the submission for approval of construction plans, the applicant shall submit a site plan of the marina area to the Department for review and approval. The site plan shall include, but not be limited to the following information:
- The location of the artificial reef;
 - Identify areas around the both sides of the marina entrance and periphery of the marina that will be open to the general public (including the physically challenged) for fishing. Identification should include: specific areas or number of areas and fishing piers, a description of these areas (i.e. entrance channel boundaries, open spaces, etc.), and distances to these fishing areas from planned parking areas;
 - Oneula Beach Park and the nine-acre expansion area;
 - Identify the setback areas required by the City Council's Resolution 93-286 granting a Special Management Area Use Permit and Shoreline Set Back Variance, Ordinance No. 93-94 Unilateral Agreement and Declaration for Conditional

**Zoning, and the Urban Design Plan approved by the
Department of Land Utilization;**

- **Public boat slips;**
- **Launching ramp complex;**
- **Sewage pumpout facilities;**
- **Public access (pedestrian, bicycle, and vehicular) to and around the edge of the marina, signs, and lighting;**
- **Public parking, restrooms and showers;**

- 25. Live-boards shall be prohibited in the Marina;**
- 26. The applicant shall comply with the provisions contained in the Memorandum of Agreement (MOA) among the applicant, the Hawaii State Historic Preservation Division, the U.S. Army Corps of Engineers, the Advisory Council of Historic Preservation, and the Office of Hawaiian Affairs regarding the treatment of historic sites on the project site;**
- 27. The applicant shall submit a copy of the "Best Management Practices" plan required by the State Department of Health pursuant to Section 401 Water Quality Certification to the Department for review and comment;**
- 28. To the extent practicable, the applicant shall preserve native strand vegetation and/or use xeriphetic native plant species for landscaping of coastal areas;**
- 29. The applicant shall provide educational information on the safe use of marinas and pollution control, in the form of brochures, signs, video, and posters;**
- 30. The applicant shall submit an annual report to the Department which shall include the status of compliance of the permit conditions and implementation of the land use;**
- 31. That the Board reserves the right to amend these conditions and the right to stop work should any unanticipated and/or unreasonable adverse ecological results occur;**
- 32. Implementation of the project shall be in general conformity with the representations made in the application on file with the Department and**

at the contested case hearing. Any substantial change in the size or nature of the marina as determined by the Department shall require an amendment to the permit. Any change that the Department determines to be incidental, shall be permitted upon review and approval of the Chairperson.

- 33. The BLNR shall retain continuing jurisdiction over this permit and in the event of any violation or non-compliance with an aforementioned condition (general or special) the BLNR may revoke this permit or take any appropriate action.**

DATED: APR 26 2000


TIMOTHY E. JOHNS

Chairperson, Board of Land and
Natural Resources

RECUSED

LYNN P. McCRORY

Member, Board of Land and
Natural Resources



WILLIAM KENNISON

Member, Board of Land and
Natural Resources

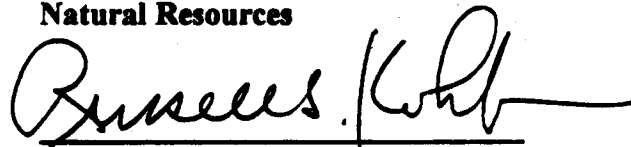
DID NOT PARTICIPATE IN
FURTHER HEARINGS

COLBERT M. MATSUMOTO

Member, Board of Land and
Natural Resources


KATHRYN WHANG INOUE

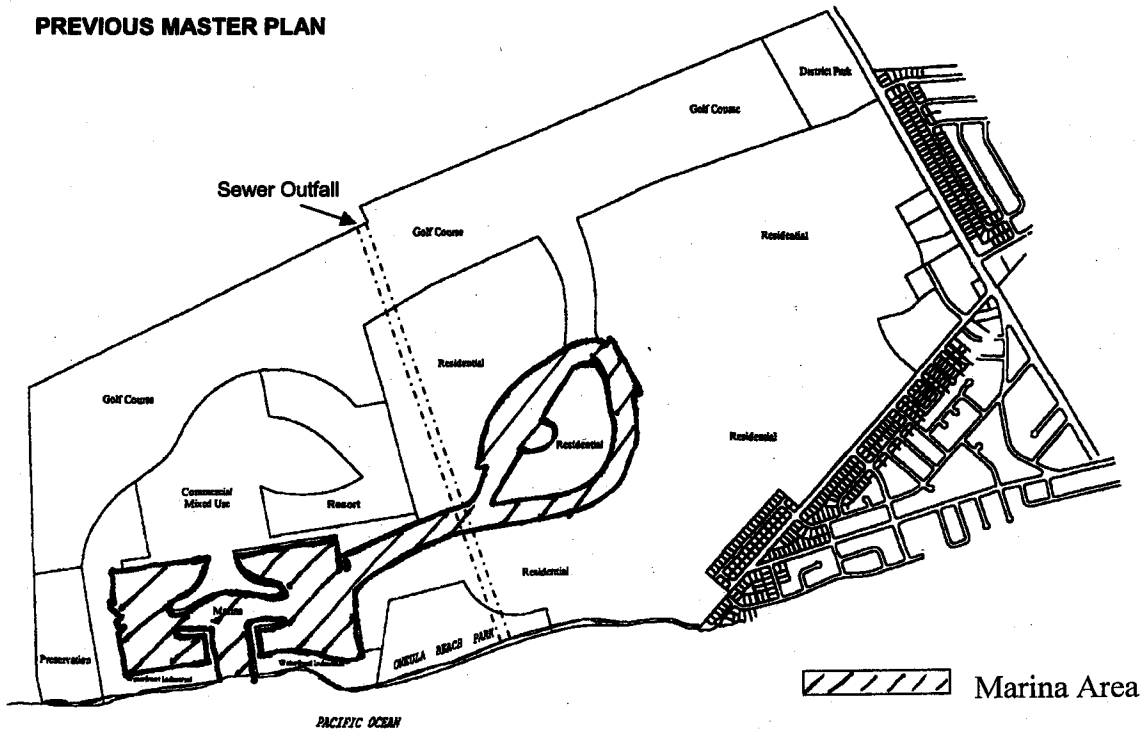
Member, Board of Land and
Natural Resources


RUSSELL S. KOKUBUN

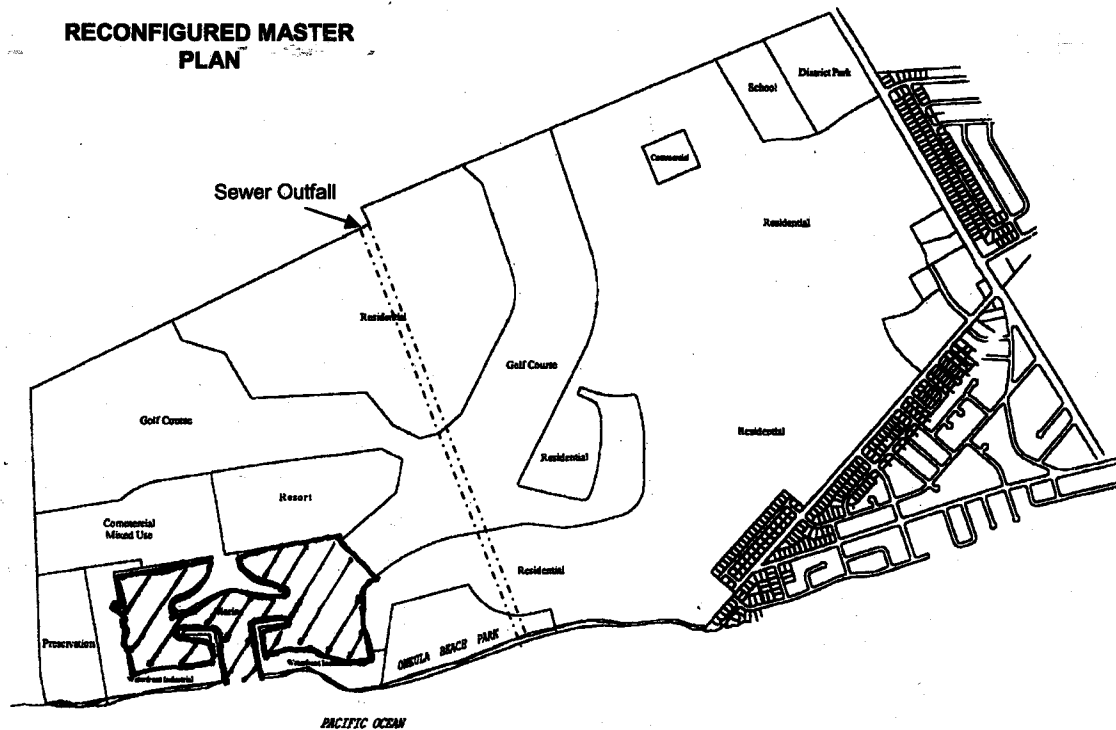
Member, Board of Land and
Natural Resources



PREVIOUS MASTER PLAN



RECONFIGURED MASTER PLAN



These materials are based on the current development plans for Ocean Pointe. They are conceptual in nature and there are no guarantees that all or any of the components will be developed or that the components will be developed as depicted here.

EXHIBIT 3

09/24/02

RECEIVED
LAND DIVISION



2001 SEP 14 A 10:43

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

LAND DIVISION

P.O. BOX 621

HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

Mr. W.G. Lee
Executive Vice President
Haseko
820 Mililani Street, Suite 820
Honolulu, Hawaii 96813-2938

SEP 10 2001

Dear Mr. Lee:

This is to inform you that on July 13, 2001, the Board of Land and Natural Resources approved HASEKO's request to amend Conservation District Use Permit OA-2760 to reflect a reduction in the size of the Ocean Pointe Marina from 120 acres to 70 acres. The Board also affirmed that all other conditions imposed by the Board under CDUA OA-2760, shall remain in effect.

Please acknowledge receipt of this approval in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days. Should you have any questions on any of these conditions, please feel free to contact Sam Lemmo of our Planning Branch at 587-0381.

Aloha

Harry Yada, Acting Administrator
Land Division

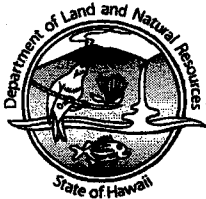
Receipt acknowledged:

Applicant's Signature

Date Sept. 13, 2001

cc: Chairperson
Oahu Board Member
Alan Oshima

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

CDUP: OA-2670

CERTIFIED/RETURN RECEIPT

Yvonne Y. Izu
Moriwara Lau & Fong LLP
400 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

OCT 29 2007

Dear Ms. Izu,

SUBJECT: Enforcement Action Regarding Breach of Conservation District Use Permit (CDUP) OA-2670 Conditions #10 and #26 Located at Honouliuli, Ewa, Oahu, Plat (1) 9-1-012:

This is to inform you that on October 26, 2007, the Board of Land and Natural Resources (Board) has found your client in violation of §183C-7, Hawaii Revised Statutes, §13-5-6 of the Administrative Rules regarding non-compliance of Conservation District Use Permit (CDUP) OA-2670 Conditions #10 and #26 subject to the following:

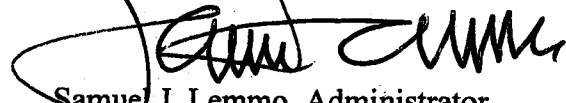
1. The landowner violated the provisions of Conservation District Use Permit OA-2670 in two instances by failing to comply with conditions #10 and #26. The alleged is fined a total of \$4,000.00 for two Conservation District Use Permit violations;
2. The landowner is fined an additional \$500.00 for administrative costs associated with the subject violations;
3. The landowner shall pay all fines (total \$4,500.00) within sixty (60) days of the date of the Board's action;
4. The landowner shall comply with the MOA or amended the MOA within 30 days to resolve the non-compliance of conditions for CDUP OA-2670;
5. That in the event of failure of the alleged to comply with any order herein, the landowner shall be fined an additional \$2,000.00 per day until the order is complied with; and
6. That in the event of failure of the landowner to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs; and

EXHIBIT 4

7. The Board requests that the Department devise a monitoring compliance plan and report back to the Board.

Please acknowledge receipt of this letter, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within (30) days. Should you have any questions, please contact Tiger Mills of our Office of our Conservation and Coastal Lands at (808) 587-0382.

Sincerely,



Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:

Signature

Date

c: Chairperson
HPD/ODLO/DOCARE-Oahu
City and County of Honolulu
-Department of Planning

MORIHARA LAU & FONG LLP

A LIMITED LIABILITY LAW PARTNERSHIP

December 4, 2007

RECEIVED

07 DEC -4 P 3:55

Hand Deliver

Mr. Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
1151 Punchbowl Street, Room 131
Honolulu, Hawaii 96813
Attention: K. Tiger Mills

DEPT. OF LAND & NATURAL RESOURCES

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
001 DEC -5 A 9:22
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

Re: Enforcement Compliance Regarding Breach of
Conservation District Use Permit (CDUP) OA-2670 - Gate Closure

Dear Mr. Lemmo:

Thank you for your letter of November 30, 2007.

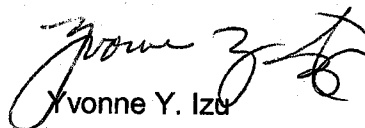
In accordance with the Board of Land and Natural Resources' order, the road through the buffered area of Site #3205 was closed on November 20, 2007. The gate across that road is locked and signs are posted indicating no access. Construction vehicles are currently accessing the Ocean Pointe site through Navy property mauka of the buffer area of Site 3205. (See attached illustration and photographs taken on November 27, 2007.)

Per your request, Haseko will keep you apprised of further developments relating to archaeological site preservation plans relating to the project.

We would appreciate you scheduling Haseko's CDUP amendment request for Board action soon.

Please feel free to call should you have any questions.

Very truly yours,


Yvonne Y. Izu

Enclosure

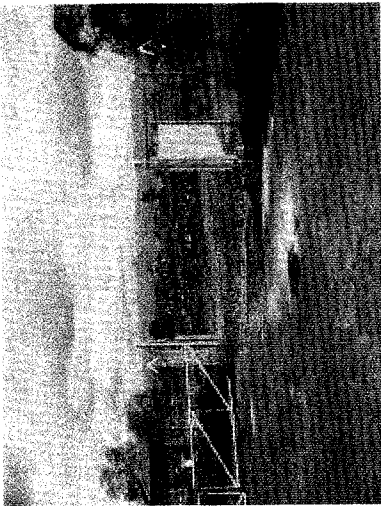
cc with enclosure:

HASEKO (Ewa), Inc.

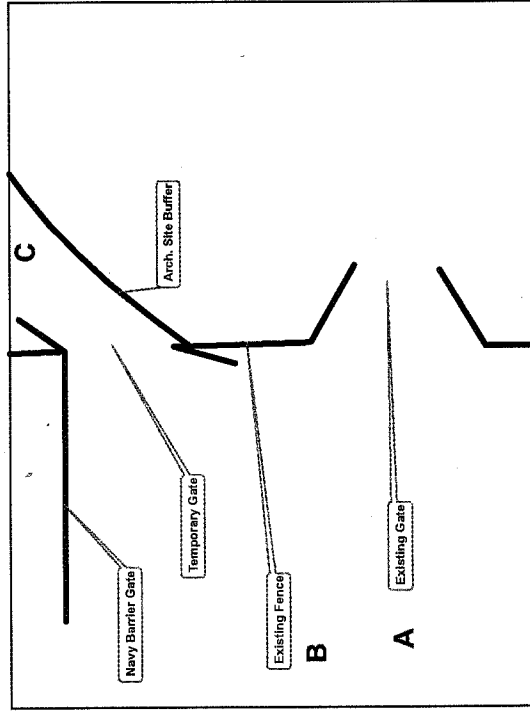
Farley Watanabe, U.S. Army Corps of Engineers

EXHIBIT 5

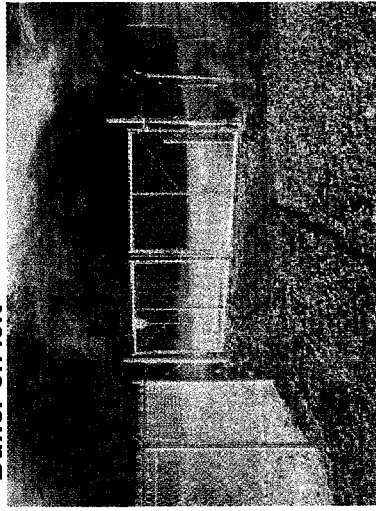
TEMPORARY ACCESS GATE INTO OCEAN POINTE (installed 11/20/07; photos taken 11/27/07)



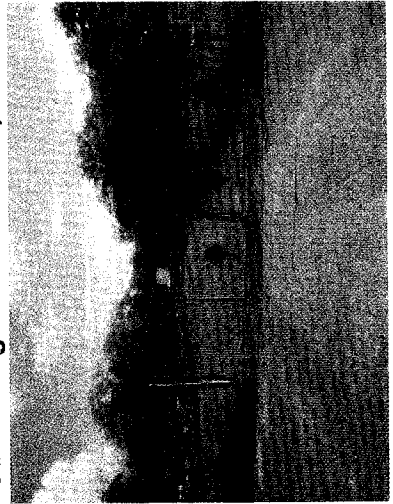
B. New Temporary Gate from West



**C. New Temporary Gate from East
 showing fence above Arch. Site
 Buffer on left**



A. Existing Gate from West, locked



**MONITORING COMPLIANCE PLAN AND REPORT
REGARDING HASEKO PROPERTIES LOCATED AT
HONOULIULI, 'EWA, O'AHU
TMK: (1) 9-1-011: 001-007 and 9-1-012: 008-013, 016,017**

STATE HISTORIC PRESERVATION DIVISION
DEPARTMENT OF LAND AND NATURAL RESOURCES



January 25, 2008

EXHIBIT 6

BACKGROUND

Archaeological investigations have taken place in the project area since 1979 (Jourdane, BPBM, 1979). A chronology of the correspondence for this project that is on file at the State Historic Preservation Division has been provided by Teresa Davan, Assistant Oahu Archaeologist in the attached Memorandum to Files, dated January 22, 2008.

Two archaeological features have been inadvertently damaged and two archaeological features were destroyed in 2006. HASEKO, the developer, has been the one to notify the US Army Corp of Engineers and the Department of Land and Natural Resources, State Historic Preservation Division of these incidents. The first incident occurred in 2000 in 3209 ('Ahu Preserve). No archaeological sites/features were damaged. The buffer was breached. State archaeologists did investigate. No historic properties were damaged. The second incident occurred in 2006 with damages to site 3205 (*Kauhale* Preserve). Two features (H1 – small pavement area and H2 - roughly piled mound) were destroyed and two more features (F1 - enclosure and G – oval platform) were damaged. No state archaeologist responded to this incident. Clearly damage to historic sites is tragic since the resource can never be replaced. HASEKO has been basically self-monitoring and reported their mistakes to the proper authorities. HASEKO and their archaeological consultants, T.S. Dye and Colleagues along with Hoakalei Cultural Foundation (a community base stewardship) are working together to insure proper protection of the sites. They are trying to make the best of the situation. There are three archaeological preserves which include six archaeological sites and their associates features. The preserves will be used for educational purposes by *Hoakalei* Cultural Foundation and the community.

In 1993, a Memorandum of Agreement (MOA) was signed by the Advisory Council on Historic Preservation, US Army Corp of Engineers, State Historic Preservation Division, Office of Hawaiian Affairs and HASEKO. The MOA was developed to mitigate adverse effects on 21 significant historic sites based on archaeological plans submitted by PHRI (Haun *et. al.* PHRI, 1991). There are 7 stipulations of the MOA. Stipulations 1, 2a, b, and 3 address specific tasks to be carried out that directly address archaeological issues.

COMPLIANCE WITH THE MOA

The State Historic Preservation Division (SHPD) has not been monitoring the progress of this project since 2004. Due to high staff turnover in the SHPD and the loose of institutional knowledge, there has been no oversight of this project.

On January 23, 2008, Nancy McMahon, (State Historic Preservation Division), Dr. Tom Dye, Elaine "Muffet" Jourdane (both from T.S. Dye and Colleagues) and Dr. Charles

Morgan (Planning Solutions) conducted a field inspection of the three archaeological preserves to verify compliance with the MOA.

Stipulation 1 of the MOA calls for the implementation of a mitigation plan for 21 significant historic sites by data recovery, interim site protection measures and archaeological monitoring. Six sites were set for preservation. This stipulation has been met. Archaeological monitoring is taking place for the road drainage project. Additional archaeological monitoring will take place for marina channel openings and the other major drainage project.

Stipulation 2a of the MOA calls for a plan that delineates the buffer zones around the preserve sites. The approved 100 foot buffers were agreed upon by all parties per the MOA. Construction activities can not be closer than 200 feet from the buffer zone. Appropriate buffers are all in place at all three preserves.

Stipulations 3 of the MOA calls for the long term preservation plan. Phase III Preservation Plan was submitted in 1997 and approved by SHPD. This plan was not very detailed and a fairly boiler plated preservation plan. The long term preservation plans with interpretative programs are being revised. The *Kauhale* Preservation Plan (sites 3201, 3202, 3205, and wetlands) (Dye, TSD, 2007) is currently in review by SHPD staff. Revised preservation plans will be submitted for Ahu Preserve (3209) and the Papuaa Preserve (4277 and 4278) after they have been reviewed by the *Hoakalei* Cultural Foundation. They have been working on the educational and interpretative material for these preserves. They have brought back Kepa Maly who wrote the original preservation plan under PHRI, to work with *Hoakalei* Cultural Foundation to develop a better, more functional preservation plan(s).

Protective fencing is in place on three sides of *Kauhale* Preserve. The *makai* side of the preserve does not have protective fence because it would be in the water and cut access off for the fisherman. The other two preserves (*Ahu* and *Papua'a*) have protective fencing in place.

Stipulation 2b calls for consultation with the Office of Hawaiian Affairs (OHA) for the data recovery work and interpretative material. Consultation did occur for the data recovery work. We are unclear if the revised preservation plan for the *Kauhale* Preserve has been given to OHA for comments and suggested to the consultant that this occur.

SUMMARY

The MOA is being complied with in due course. The MOA Stipulations 2a, b and 3 are still in progress and being revised as the HASEKO project moves forward. The buffers of the *Kauhale* Preserve will need to be adjusted. The *mauka* boundary is being adjusted to be in line with the old cane haul road. The *makai* boundary is being adjusted to follow the certified shoreline. The western boundary will follow the property boundary.

The community (*Hoakalei* Cultural Foundation) is actively involved with the development of the long term management of the sites set for preservation. The long term preservation plans are including more than interpretive material. It includes educational activities and programs making the use of these preserves an important cultural element in the community. OHA will need to be involved at some point as the Preservation Plans are being finalized.

Breaches of the protective buffers and site damage/destruction were not intentional on the HASEKO's part. The community and the developers' consultants have tried to turn the unfortunate incidents in positives and working on the newly revised preservation plans. These preserves will take on more of a cultural landscape that can be used and enjoyed by many. The sites that were destroyed can be restored and now these restored sites can actively used in the educational programs to show students and visitor how they really functioned.

COMPLIANCE PLAN

- SHPD shall be reviewing the new preservation plans for the preserves in consultation with OHA for approval.
- SHPD and OHA shall participate with *Hoakalei* Cultural Foundation on the interpretative material and educational programs. SHPD and *Hoakalei* Cultural Foundation need to develop a trusting relationship now, as they will both be the long-term stewards of these preserves.
- SHPD shall insure that the preservation plans are implemented and carried out acceptably.
- SHPD shall check on the status of these preserves periodically.

To: Files
From: Teresa Davan, O'ahu Assistant Archaeologist
Date: January 22, 2008
Subject: Chronology Log of HASEKO (a.k.a. 'Ewa Marina, Ocean Pointe) Historic Preservation Mitigation Activities
Honouliuli Ahupua'a, 'Ewa District, Island of O'ahu
TMK: (1) 9-1-011:001thru 007; 9-1-012:008, 009, 011, 012, 013, 016, 017
See Exhibits A and B. Tax Map Keys.

1979

Archaeological Reconnaissance of Proposed Ewa Marina Community, Campbell Estate Properties (Elaine Jourdane, BPBM. 1979) TMK: 9-1-011:003; 9-1-012:002, 005, 006-017, 021, 023
Eight sites identified in Area A. Higher density of sites identified in area B.

December 1983

Archaeological Test Excavations at the Proposed Ewa Marina Community Development Area (Hommon, Robert J. and Hamilton M. Ahlo, Jr. – Science Management, Inc., December 1983) TMK: 9-1-012:002, 003, 005-017, 023 and 028) No archaeological resources identified. According to authors, no necessity for future archaeological investigations in study area.

June 1984

Reconnaissance and Evaluation of Archaeological Sites in the Proposed Ewa Marina Community (Hammatt, Hallett H. Cultural Surveys Hawaii, Inc. June 1984). Only portion of project area surveyed. Sites 3201, 3202, 3203, 3205, 3206, 3209, 3210, and 3215 were relocated and evaluated for significance.

1990

Interim Report: Background, Summary of Findings, and General Significance Assessments and Recommended General Treatments, Intensive Archaeological Survey and Testing Excavations, Ewa Marina Community Project – Phase I. Rosendahl. 1990 – Paul H. Rosendahl, PhD, Inc. (PHRI). 53 sites comprised of 268 features identified in project area. 56 test excavations at 54 features identified cultural resources including, abraders, flakes, fish hooks, octopus lures, etc. 82 auger cores ranging from 0.12 to 1.64 m below surface spaced 20 apart at coastal areas. No cultural resources identified in cores. Twenty-four backhoe trenches – no cultural deposits. 112 shovel tests at 13 sites. Evidence of cultural deposits identified in 43 shovel tests. 33% (58) of excavatable sinkholes sampled. Bird bone, midden, and charcoal identified. 45 sites assessed as significant for information content only. No further work recommended for 32 of 45 sites identified. Further data collection recommended for 13 sites. Data collection and, pending results of data collection, preservation “as is” for 1 site. Further data collection and preservation with interpretive development of selected features and/or portions of 7 sites.

June 1991

Intensive Archaeological Survey and Test Excavations, Ewa Marina Community Project – Phase I (Dunn, Amy E. *et al.*) accepted by SHPD. TMK: 9-1-011:001, 002-007; 9-1-012:008, 009, 011, 012, 013, 016, and 017. Fifty-three sites containing 312 features identified. A total of 3,789 artifacts recovered, 67 of which identified as indigenous. 47 sites identified as significant solely for information content. No further work for 32 sites. Further data collection for 14 sites. Data collection, and pending results of data recovery, preservation “as is” for 1 site. Further data collection and preservation with interpretive development. Further data recovery for sinkholes within clusters F, E, A, C, B, and G.
See Exhibits C and D, SHPD correspondence to Perry White (March 11, 1991) and SHPD correspondence to Warren Kanai (June 27, 1991), respectively.

Jan 1991

Intensive Archaeological Survey and Test Excavations, Ewa Marina Community Project – Phase II (Dunn and Haun. 1991). Sites 3208 and 4293 identified. No further work recommended for 4293. Data Collection for 3208, no further work after data collection completed.

June 1991

Archaeological Mitigation Plan, Ewa Marina Community Project – Phase 1, Mitigation Plan for Data Recovery, Interim Site Preservation, and Monitoring (Haun *et al.* February 1991) accepted by the State Historic Preservation Division (SHPD). According to Haun *et al.* (1991), Data Recovery - No Preservation of 14 sites (3203, 3206, 4265, 3210, 3213, 3211, 4275, 4280, 4281, 4271, 3216, 3215, 3208, and 4295), Further Data Collection - Preservation with Interpretive Development of 6 sites (3201, 3202, 3205, 4277, 4278, and 3209), Further Data Collection – Preservation As Is of site 4297 (Preservation as is if burial present, if not feasible relocation or data recovery recommended. Interim Site Preservation Plan – interim protection of all sites requiring data collection research. Plotting and locating all sites on grading plans. Establishing appropriate buffer zone. No construction within buffer zone. Notification of construction supervisors of interim measures, on-site monitoring of grubbing and grading in immediate vicinity of all sites to be preserved and of sites that have not undergone data collection. Monitoring Plan – protect all known sites scheduled for preservation and sites that have not undergone data recovery. Crew normally consists of one person present on site during construction within vicinity of sites for which data recovery has not been completed.

See Exhibit E. Correspondence letter from SHPD to Warren Kanai (June 27, 1997).

July 1991

Additional Testing Conducted of a Potential Burial Feature and Monitoring of Backhoe Excavations Ewa Marina Community Project - Phase I – Letter Report from Amy Dunn and Paul H. Rosendahl, PhD (PHRI) to HASEKO. Excavation at Site 4297, Feature B and monitoring of backhoe excavations. No human remains encountered. No further archaeological work recommended for site.

See Exhibit F. SHPD correspondence to Perry White regarding receipt of letter report.

1993

Memorandum of Agreement (MOA) in effect. Stipulation 1. Program outlined in Archaeological Mitigation Plan, Ewa Marina Community Project Phase 1, Mitigation Plan for Data Recovery, Interim Site Preservation, and Monitoring (February 1991) shall be carried out. Stipulation 2a. Submit to the Corps a plan for the delineation of buffer zones around archaeological sites. Plan shall approved prior to issuance of permit and be in accordance with Interim Preservation Plan section of the approved Archaeological Mitigation Plan. Stipulation 2b. Submit to the Corps a plan for consulting with Office of Hawaiian Affairs (OHA) concerning the interpretive language used in public education programs implemented in fulfillment of DA permit.

See Exhibit G. Memorandum of Agreement.

February 1993

Ewa Marina Community Project Memorandum of Agreement Items 2.a,b Compliance Plans (Maly, Kepa and Rosendahl - PHRI). **Stipulation 2a.** Buffer zones for all sites that require interim preservation will be approved prior to (a) implementation of the interim preservation work and (b) any land alteration work or other construction work. SHPO will verify implementation of interim preservation work. Interim preservation insured by (1) accurate plotting of all sites on grading plans prior to initiation of grubbing and grading; (2) establishment of approved buffers within which no construction activity is to occur; (3) notification of construction supervisors as to nature and location of sites; and (4) On-site monitoring of construction grubbing and grading in immediate vicinity of sites to be preserved an/or where data collection has not been completed. Long-term preservation – outer edge of nearest planned roadway should be 50 to 100 feet away from sites 3202 and 3205. Area between Site 3209 and Marina kept as

open space with no structures. Construction activity allowed in this area during construction of marina so long as it does not come closer than 25 feet from features C, D, E, F, and G or closer than 50 feet from Feature A. Following completion of marina, on sides other than marina, area within 50 feet of Features D, C, E, F, and G and within 100 feet of Feature A, is to be restored as specified in interpretive plan.

Buffer to remain as open space. Area between Sites 427 and 4278 and marina to be open space with no structures. Construction activities related to marina allowed as long as not within 25 feet of Sites. Buffer to extend 50 to 75 feet on sides not facing marina. No land disturbance between 4277 and 4278.

Stipulation 2b. Final data recovery report to be submitted to OHA for review and comment. Following OHA review, permittee will organize a meeting to present preferred guidelines, information content, and methods of interpretation for development. Agreed upon interpretive language will be finalized for use in interpretive development.

See Exhibit H. 'Ewa Marina Community Project Memorandum of Agreement Items 2.a., b Compliance Plans.

June 28, 1994

Archaeological Mitigation Program, Ewa Marina Community Project, Phase IIb – Data Analyses and Reports.

See Exhibit I. SHPD Correspondence to Susan Goodfellow (June 28, 1994). (report in library)

July 1994

Archaeological Mitigation Program, Ewa Marina Community Project, Interim Report, Phase II(a) – Data Recovery: Filed Work and Interim Report (Franklin, May 1994). Data collection of 15 sites. Site 4297 – no burial present, recommendation of no further work. Excavations at sinkhole cluster 6 removed from data recovery scope of work per approval of SHPD.

See Exhibit J. SHPD correspondence to Raymond Kanna (July 13, 1994).

1996

Final Report - Phase II – Data Recovery Archaeological Mitigation Program, Ewa Marina Community Project Vols I, II, and III accepted by SHPD. Site 4297 – No human remains encountered during data recovery. No preservation recommended for 4297.

See Exhibit K. SHPD correspondence letter to Warren Wulzen, Dated November 27, 1995 (LOG NO: 15995, DOC NO: 9511TD18).

1997

Phase III – Archaeological Site Preservation Plan, Phased Mitigation Program, 'Ewa Marina Community Project (Maly, September 1997). 3201, 3202, and 3205 protected as multiple site complex preservation area, as a part of W-2 Wetland Preservation Area. 3209 in Preservation Area. 4277 and 4278 within single preserve area. 3201 within 22-Acre W-2 Preserve Area, 3202 and 3205 100 foot buffer. 3209, 4277 and 4278 100-foot buffer.

October 27, 1997

Letter Report from Paul Rosendahl, PhD (PHRI) to Mr. Perry White (Planning Solutions) re: Ewa Marina Community Project, Monitoring of Grubbing and Grading for a Fence in Area of Wetlands, and Flagging of Specific Preservation Sites. Flagged fence alignment inspected by monitor prior to grubbing and grading. No archaeological remains identified within 15 foot clearing limits.

February 26, 1998

Site visit conducted by Dr. Sara Collins and Elaine Jourdane (SHPD Archaeologists) of sites 3215 and 3216. Collins and Jourdane saw features A, E, F, and K of Site 3216 and Features A, B, D, E, F, G1, G2, H, N, O, Q, W, V, X, Y, AA – CC, II, JJ, KK, NN, and OO of Site 3215. Sites have no archaeological traits of religious activity; no disturbed burial sites.

See Exhibit L. SHPD Correspondence to Reverend Kaleo Patterson dated February 26, 1998.

March 1998

Site Visit conducted by Dr. Sara Collins, Muffet Jourdane, Kai Markell, Kana'i Kapeliela and Kala'au Wahilani, SHPD Staff to assess whether burials have been disturbed by construction activities. Non-human bones and one tooth identified near feature Q of Site 3215. No archaeological significance.

See Exhibit M. SHPD Memorandum dated March 9, 1998.

March 1998

Field inspection conducted on March 6, 1998 to determine condition of sites 4277 and 4278. All features of sites 4277 and 4278 are within preservation area.

See Exhibit N. Letter to Perry White from Dr. Paul H. Rosendahl dated March 9, 1998.

March 1999

SHPD Review of revised text of interpretive signs. Four minor recommendations.

See Exhibit O. SHPD correspondence to Dr. Paul Rosendahl, dated March 16, 1999.

August 1999

Site Visit by Dr. Sara Collins (SHPD Archaeologist) to Site 4277 and 4278 preserve area to inspect location and flag boundaries.

See Exhibit P. SHPD Correspondence to Perry White (December 23, 1999).

December 1999

Site visit by Dr. Sara Collins and Muffett Jourdane (SHPD Archaeologists) of preserve area for Sites 4277 and 4278 for inspection tour of clean-up and clearing operations. Clearing of preserve has been carried out in accordance with agreed-upon buffers and with exemplary care.

See Exhibit P. SHPD Correspondence to Perry White (December 23, 1999).

March 24, 2000

Site visit by Dr. Sara Collins and Muffett Jourdane (SHPD Archaeologists) to preservation areas (Sites 3209, 4277, and 4278). HASEKO will (1) reinforce temp. boundary fences around sites; (2) meet contractor and field engineer to ensure that purposes of fences are understood and placement of fences are mutually acceptable; and (3) monitor activities and provide guidance as necessary.

See Exhibit Q. Letter to Dr. Collins from Charles Morgan (Planning Solutions) dated March 28, 2000.

March 2004

Scope of Work, Supplemental Archaeological Survey: Subsurface Testing of Beach Areas at Marina Channel and Kalo'i Drainage Channel (Paul H. Rosendahl, PhD) approved by SHPD.

See Exhibit R. SHPD correspondence to Dr. Paul H. Rosendahl dated March 11, 2004.

2004

Supplemental Archaeological Survey: Subsurface Testing of Beach Areas at Marina Channel and Kalo'i Drainage Channel, Ocean Pointe Project report (Corbin, July 2004) accepted by SHPD. No human skeletal remains or cultural resources identified.

February 8, 2006

Archaeological Site Investigation and Assessment of Site 3205, Ocean Pointe (Jourdane, Elaine H.R. and Thomas Dye, PhD. T.S. Dye & Colleagues, Archaeologists, Inc.). Damage caused to site -3502 caused by "mistaken clearing of vegetation with heavy machinery." Features H1 and H2 destroyed. Features F1 and G damaged.

January 2008

Revised Archaeological Site Preservation Plan for Sites 50-80-14-3201, -3202, and -3205 in the Kauhale Preserve at Hoakalei (Dye, Thomas S. – T.S. Dye & Colleagues, Archaeologists, Inc. 2007) submitted to SHPD. Sites -3201, -3202, and -3205 consolidated into the Kauhale Preserve Area. Revised plan incorporated community input and stewardship of the Hoakalei Cultural Foundation.



HASEKO

HASEKO (Ewa), Inc.

RECEIVED

June 22, 2007
2005-0002-001

'07 JUN 22 P3:56

Mr. Allan Smith, Interim Chairperson
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

Subject: Amendment to Conservation District Use Permit (CDUP) OA-2670 for the Hoakalei Marina Entrance Channel Located at Honouliuli, Ewa, Island of Oahu, Makai of TMK:(1) 9-1-012:XXX

Dear Chair Smith:

Thank you for your department's letter dated November 2, 2006, commenting on HASEKO (Ewa) Inc.'s request to amend Conservation District Use Permit ("CDUP") OA-2670 to reflect a smaller, approximately 53.76-acre marina. We apologize for the delay in responding. We had been awaiting a determination by the City & County of Honolulu on our request for approval of the marina reduction and, as more fully discussed below, that approval was only recently granted.

A. Special Management Area Use Permit ("SMP")

On July 5, 2006, HASEKO submitted a request to the City Department of Planning and Permitting (DPP) for a minor modification of the Special Management Area Use Permit (SMP) for the Ewa Marina Project, now known as Ocean Pointe (Resolution No. 93-286, CD1) (See Exhibit 1). Early on, DPP had determined that the SMP modification qualified as a minor modification requiring only departmental (and not City Council) approval (See Exhibit 2). On April 23, 2007, DPP approved the minor modification of the SMP to reflect the smaller 53.76-acre marina (See Exhibit 3).

B. Reasons for Reduction in Marina Size

DPP's letter correctly notes that the reduction in the size of the marina is driven, in part, by regulatory constraints and requirements. As you know, under the CDUP HASEKO is mandated to provide a number of public facilities and amenities around the marina. In addition to seven boat launching ramps, the complex to be dedicated to the State will include trailer parking, public parking, boat wash down areas, restrooms and outside showers (required by Condition 15.F). Additionally, Condition 15.G requires HASEKO to provide restrooms, showers, and public parking close to the shoreline on either side of the marina channel, and Condition 24 requires it to provide handicapped-accessible fishing areas around the periphery of the marina.

HASEKO plans to undertake a number of initiatives in addition to the public facilities and amenities that we are required to provide. As a culmination of years of working closely with the native Hawaiian and 'Ewa Beach communities and with ocean recreation interest groups, HASEKO now envisions the marina area to include cultural displays, educational signs and kiosks, and other features. Together, these could create an outdoor museum celebrating 'Ewa's prehistory and history, coastal and maritime matters, and native Hawaiian culture and natural resources. The spending beach that juts into the marina basin from the north is envisioned as a hub of outdoor activity and festivity, with an open-air amphitheater or hula mound for special events. There may also be play areas for children, picnic spots, shops, open-air restaurants and seating areas where people can relax and enjoy the marina ambiance.

EXHIBIT 7

To accommodate all of these amenities and provide an adequate buffer between the marina and the residential area, it was desirable to have additional land area surrounding the marina. Reducing the size of the marina basin provides that additional land area. Thus, the reduction in the amount of wet surface within the marina is offset by an increase in the marina open space dedicated for public use. These open public spaces around the marina will provide opportunities for an array of diverse activities, inviting not only to persons interested in boating and ocean recreation, but also possibly drawing people there for cultural and to community gatherings.

C. Recordation of CDUP

The letter notes that the file does not contain documentation that the permit approval has been placed in recordable form as part of a deed instrument pursuant to Condition 11 of the CDUP, which states:

The applicant shall provide documentation (i.e. book/page or document number) that this approval has been placed in recordable form as part of the deed instrument for TMK 9-1-12:6, prior to submission for approval of construction plans.

Documentation in recordable form is pending HASEKO's finalizing the construction plans for the marina entrance channel. Although construction plans for excavation of the marina basin (i.e., the area mauka of the shoreline and not within the conservation district) have been approved and permitted, HASEKO is still preparing construction plans for the marina landside improvements and for the seaward area, including the entrance channel. As required by Condition 11, prior to submitting these construction plans, we will record with the State recording office the required documentation noting the CDUP conditions and will provide you with a copy of that documentation with the recording information noted.

HASEKO had delayed recordation of the CDUP because the marina area is currently part of a very large Tax Map Key (TMK) parcel which is slated to eventually contain residential, commercial, resort, and marina components of the project. As the CDUP conditions are unrelated to the residential, commercial and resort elements of Ocean Pointe and are not intended to encumber those developments, HASEKO will record the CDUP when the marina component of the project is subdivided from the other components, or just prior to submission of construction plans for the marina entrance channel, whichever is earlier.

Your department's November 2, 2006, letter also indicates that the DLNR is considering amending this condition, because the subject area has been subdivided and defined as a different TMK parcel. While HASEKO has no strong objection to this, we suggest that such an amendment not be done at this time. Since obtaining the CDUP, the original lot (TMK 9-1-012:006) has gone through several subdivisions. As part of a series of further subdivisions that are planned, the lot is, in fact, currently being re-subdivided. At the completion of each subdivision, the newly created lots often receive new TMK numbers. Thus, while the current TMK number for the lot is 9-1-134:005, it is likely that this will change again, perhaps several times. Please be assured that the document to be recorded with the State recording office will recite the most current available TMK number.

D. Memorandum of Agreement ("MOA") for Artificial Reef

The MOA with the Department of Army Corps of Engineers and the Division of Aquatic Resources ("DAR") with respect to the artificial reef called for in Condition 17 is enclosed as Exhibit 4. HASEKO continues to work directly with DAR toward satisfying this condition.

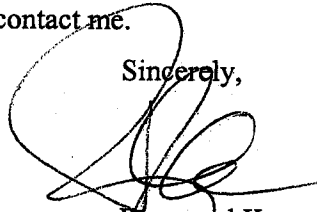
Page 3
Mr. Allan Smith
June 22, 2007

E. 2001 Environmental Assessment

The 2001 Final Supplemental Environmental Assessment for the Revised Ocean Pointe Master Plan is enclosed as Exhibit 5.

We trust that we have adequately addressed all of your comments and/or requests for documents, and look forward to this matter being scheduled before the Board of Land and Natural Resources. Should you have further questions, please feel free to contact me.

Sincerely,



Raymond Kanna
Executive Vice President
HASKEKO (Ewa), Inc.

Enclosures:

- (1) Exhibit 1: Special Management Area Use Permit (SMP) for the Ewa Marina Project (Resolution No. 93-286, CD1)
- (2) DPP Determination that SMP modification qualifies as a minor modification requiring only departmental approval
- (3) April 23, 2007, letter from DPP approving minor modification of the SMP to reflect the smaller 53.76-acre marina
- (4) MOA between Corps of Engineers, Division of Aquatic Resources, and HASEKO concerning the artificial reef
- (5) 2001 Final Supplemental Environmental Assessment for the Revised Ocean Pointe Master Plan

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 523-4432 • FAX: (808) 527-6743
DEPT. INTERNET: www.honolulu.gov • INTERNET: www.honolulu.gov



MUFI HANNEMANN
MAYOR

HENRY ENG, FAICP
DIRECTOR

DAVID K. TANOUE
DEPUTY DIRECTOR

2006/ELOG-1621(gu)

April 23, 2007

Ms. Nancy Maeda
Executive Vice President
Haseko (Ewa) Inc.
91-1001 Kaimalie, Suite 205
Ewa Beach, Hawaii 97606-5005

Dear Ms. Maeda:

Subject: Request for Minor Modification - Ocean Pointe Marina
Special Management Area Use Permit No. 93/SMA-28
Haseko (Ewa), Inc.
91-1221 Kaieolea Drive and 91-936, -950, and
91-108C Papipi Road - Ewa Beach
Tax Map Key 9-1-12: 8, 9, 11, 12 and 17
Council Resolution 93-286, CD-1

This follows up on a recent meeting between Ms. Angela Fong, representing Haseko (Ewa) Inc., and Ms. Geri Ung of our staff, regarding your letter of July 5, 2006, which requested a minor modification to Haseko's Special Management Area Use Permit (SMP) [Resolution 93-286, CD-1]. The requested modification is to recognize the current configuration of the Hoakalei Marina (formerly known as Ewa Marina), and was submitted following the Department of Planning and Permitting (DPP) May 24, 2006 determination that the reconfiguration qualifies as a minor modification of the subject SMP.

As had been mutually agreed upon by Ms. Fong (on Haseko's behalf) and the DPP, a decision on the modification request has been held in abeyance until resolution of certain related issues (i.e., Kaloi drainage channel SMP application, zone change application for areas around the marina, establishment of marina metes and bounds, and an SMA boundary amendment). These issues have now been sufficiently addressed to enable the department to respond to the requested SMP modification.

In reviewing your request, the DPP has considered the following information:

- A. Background: The current Ocean Pointe marina reconfiguration has evolved as part of Haseko's compliance process with regulatory constraints and requirements for the Ocean Pointe development.

The marina has undergone a number of reconfigurations over the years. Under the original plan, the marina straddled the Honouliuli Wastewater Treatment Plant sewer

EXHIBIT 8

ocean outfall that runs north-to-south through the middle of the Ocean Pointe site. Navigability constraints and the need to meet regional drainage concerns resulted in the first marina reconfiguration, which eliminated the then-proposed east basin, reducing the size of the marina from 120 acres to 70 acres.

The marina's current configuration reflects the elimination of an additional 16 acres, further reducing the total acreage to approximately 54 acres.

Grading plans approved by the DPP have now established the actual metes and bounds of this current configuration.

- B. Department of Army Corps of Engineers' (DA) Approval of Current Proposal: In its June 29, 2005 *Notice of Amendment*, the DA approved Haseko's request to amend the previously authorized scope of work for the marina (DA Permit PODCO 2117) to reflect the reduction in marina size from 70 acres to its current 54-acre configuration. The DA stated that the requested amendment "is prudent, reasonable and not contrary to the public interest."
- C. 2002 SMP Minor Modification: The subject SMP Resolution was adopted in 1993 and based on the original 120-acre marina configuration. In 2002, Haseko's request for a minor SMP modification to eliminate the 50 acres of the east basin was approved by the DPP (DPP letter of September 12, 2002), and conditioned upon the requirement that a supplemental archaeological survey in the area of the entrance channel be conducted prior to ground disturbance near the shoreline area. In compliance with this condition, Haseko submitted a supplemental archaeological inventory survey report to the State Historic Preservation Division (SHPD), which accepted the report as final (SHPD letter of December 10, 2004).
- D. SMA Boundary Amendment - Ordinance 94-63: Prior to passage of Ordinance 94-63, the SMA boundary for Ocean Pointe reflected an earlier marina configuration. The current SMA map for the development was adopted through Ordinance 94-63 by the City Council, which includes the following map notation:

The SMA boundary is located 100 feet inland from the water's edge of the marina as constructed.

Through the adoption of this ordinance (map with notation, no metes and bounds), the City Council recognized that future marina reconfigurations were likely, and that the SMA boundary should adjust with the changing waterway boundaries to remain 100 feet inland from the edge. Thus, "development" within 100 feet of the marina's water's edge would be regulated for the protection of coastal resources.

In 2002, the DPP's approval of Haseko's SMP minor modification request for marina reconfiguration was based on its determination that an SMA boundary amendment was not required because of the flexibility provided by Ordinance 94-63 (map and notation).

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Based on this, Haseko, in its 2006 letter, again requested that a minor SMP modification for the marina's current reconfiguration be granted without the requirement of an SMA boundary amendment.

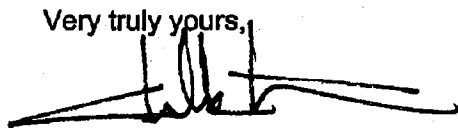
Please be advised that because the marina's metes and bounds have now been established, the department will soon be forwarding a proposal to the City Council to amend the SMA Map for the Ewa area to recognize the current marina configuration. The proposed SMA boundary line is drawn 100 feet inland from the water's edge of the marina, in compliance with the map notation of Ordinance 94-63. This proposed SMA boundary amendment has been approved by the State Office of Planning (letter dated April 11, 2007), the designated lead agency under the provisions of Chapter 205A, HRS, the Hawaii Coastal Zone Management Act.

Therefore, the SMA boundary issue raised in Haseko's July 2006 letter is addressed by the DPP's boundary amendment proposal.

DPP's Response - Upon review of Haseko's request and related information, please be advised that the DPP hereby **APPROVES** a minor modification to the subject SMP for the current marina reconfiguration.

We hope this provides the information you require. Should you have any questions, please contact Geri Ung of our staff at 768-8034.

Very truly yours,


Henry Eng, FAICP, Director
Department of Planning and Permitting

HE:pl

cc: Angela Fong

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